

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

Proposed Pilot Regulations For Accelerated Application Processing

November 14, 2005

AUTHORITY: These regulations are authorized pursuant to R.I. Gen. Laws §§ 42-17.1-2(l), (s) and (z), and § 2-1-20.1, and adopted in accordance with R.I. Administrative Procedures Act, R.I. General Laws Chapter 42-35 as amended.

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RULE 1 - PURPOSE

The purpose of these regulations is to establish a pilot program to test the feasibility of a new procedure to expedite the department's review of select applications. This pilot program offers applicants the option to pay an extra fee to have their applications reviewed by staff on an overtime basis. In effect, the program will match departmental employees in select permitting programs who are interested in earning overtime compensation with applicants who are willing to pay the costs associated with an overtime review in order to expedite the department's decision on their application. The department anticipates that this process will not only benefit those applicants who want to pay for an accelerated, overtime review, but will also benefit the remaining applicants by reducing the number of applications to be reviewed during the normal work day.

RULE 2 - AUTHORITY

These regulations are authorized pursuant to R.I. Gen. Laws §§42-17.1-2(l), (s) and (z), and § 2-1-20.1, and adopted in accordance with R.I. Administrative Procedures Act, R.I. General Laws Chapter 42-35 as amended.

RULE 3 - APPLICABILITY

- 3.01 The terms and provisions of these rules and regulations shall be liberally construed to permit the Department to effectuate the purposes of state law, goals, and policies.
- 3.02 General Applicability: Unless otherwise noted, these pilot regulations shall apply only to the specific programs and application processes identified in Rule 6 herein. Upon evaluation of the pilot program, DEM will determine whether to issue permanent regulations and whether to expand or reduce the number of eligible permitting programs.
- 3.03 Reservation of Rights: The Department reserves the right to deny any applicant's request for accelerated processing under this pilot program based on staff availability, the complexity of the application, the number of applications awaiting overtime review, the level of review (e.g. staff seniority) required for the application in question or other factors that make the application inappropriate for such review. All applications accepted by DEM for accelerated processing will be reviewed on their merits. There is no assumption that an application is complete or will be approved simply because it is accepted for accelerated processing.

RULE 4 - ADMINISTRATIVE FINDINGS

- 4.01 In 2004, the Department processed approximately ninety (90) applications in its Freshwater Wetlands Program relating to the identification of Freshwater Wetlands and wetland edges. The estimated processing time for these applications is estimated to have ranged from 35 to 65 days, depending on the type of application.

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- 4.02 In 2004, the Department processed approximately 2,500 applications in its ISDS Program relating to new building construction ($<5,000 \text{ gal./day}$), sub-division and system suitability and soil evaluations. The estimated processing time for these applications is estimated to have ranged from 30 to 100 days, depending on the type of application.
- 4.03 The length of time it takes for DEM to begin its review of an application is highly dependant on the number of applications awaiting review and the number of staff who are qualified, trained and available to review a particular type of application.
- 4.04 The delay that occurs while applications wait for staff to become available to review those applications can result in significant inconvenience for the applicants waiting to begin their projects.
- 4.05 The Department has highly trained staff members in various permitting programs who have indicated a willingness to review applications before and/or after their normal workday hours in return for overtime compensation.
- 4.06 DEM believes that some applicants would be willing to pay the extra costs associated with processing their applications on an overtime basis in order to obtain an accelerated DEM review.
- 4.07 By matching employees willing to work overtime with applicants willing to pay the costs associated with the overtime review of their applications, the Department can increase the number of applications reviewed and provide a valuable service to applicants without incurring additional personnel costs. Processing applications on an overtime basis will yield a net increase in the number of personnel-hours that DEM has available to review applications.
- 4.08 Applicants who are willing to pay the costs associated with processing their application on an overtime basis could have their applications accelerated without negatively impacting other applicants. In fact, since every application that is accelerated will be one less application awaiting standard processing, using overtime to expedite some applications should lead to reduced processing times for all applications within the same program.

RULE 5 - DEFINITIONS

For the purposes of these regulations, the following terms shall have the following meanings:

- 5.01 **“DEM”** or the **“Department of Environmental Management”** or the **“Department”** means the Rhode Island Department of Environmental Management and/or any office thereof.
- 5.02 **“Director”** means the Director of the Department of Environmental Management or his/her designee.
- 5.03 **“Accelerated processing”** means the procedures provided for by these regulations for accelerating the review of specified applications using staff overtime paid for by the applicant.
- 5.04 **“GPD”** means gallons-per-day.

- 5.05 **“Freshwater wetland,”** shall have the meaning set forth by statute in R.I. Gen. Laws §2-1-20, as further defined in DEM’s Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act.
- 5.06 **“ISDS”** means individual sewage disposal system, as that term is defined in DEM’s Rules and Regulations Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Individual Sewage Disposal Systems.
- 5.07 **“ISDS Regulations,”** means DEM’s Rules and Regulations Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Individual Sewage Disposal Systems.
- 5.08 **“Return date,”** shall mean the date that an application is mailed to the applicant as determined by the date of mailing entered into DEM’s Freshwater Wetlands or ISDS permit processing database.
- 5.09 **“Standard review,”** means the manner in which applications are normally received, sorted, distributed to staff and processed pursuant to applicable regulations and practice.
- 5.10 **“Wetland Regulations,”** means DEM’s Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act.

RULE 6 – ELIGIBLE APPLICATIONS

- 6.01 Only the following DEM applications shall be eligible for accelerated processing pursuant to these regulations.
 - (A) Freshwater Wetlands Program:
 - (1) Applications to determine the presence of freshwater wetlands; and
 - (2) Applications to verify wetland edges.
 - (B) ISDS Program:
 - (1) New building construction applications for systems discharging less than 5,000 gpd;
 - (2) Soil evaluation applications;
 - (3) Subdivision Suitability applications; and
 - (4) System Suitability applications.
- 6.02 Applications that include or require variance requests shall not be eligible for accelerated processing.
- 6.03 DEM reserves the right to deny accelerated processing for any application where the Director determines that the application is too complex or requires substantive review by senior staff members who are not eligible to receive overtime compensation.

RULE 7 – APPLICATION

- 7.01 Applications for accelerated processing shall be submitted on forms to be provided by the applicable program along with the applicant's application package.
- 7.02 Applicants seeking accelerated processing of an application may submit the application to DEM on Monday, Tuesday or Wednesday of any given week. (Applications received by DEM on Thursday or Friday will be deemed to be submitted on the first business day of the following week.) On Thursday and Friday, DEM shall evaluate the number and type of applications submitted for accelerated processing and will attempt to match those applications with appropriately trained staff who have volunteered to process applications on an overtime basis.
- 7.03 If DEM determines that it **can** process the application within the time allotted in §7.04, below, then DEM will assign the application to the queue for accelerated processing. For the purposes of these regulations, all applications that are deemed acceptable for accelerated processing shall be considered "assigned" as of the close of business on the Friday following submission of the application.

If DEM determines that it **cannot** process the application within the time allotted in §7.04, below, then DEM will place the application in the queue for standard review and will return the applicant's payment for accelerated processing.

- 7.04 Upon assignment of an application for accelerated processing, DEM agrees to complete its review of the application or accepted resubmission in accordance with the following schedule:

(A) Freshwater Wetlands Applications:

- | | |
|-------------------------------------|-------------------------|
| (1) Presence of freshwater wetlands | 2 weeks from assignment |
| (2) Wetland edge verifications | 3 weeks from assignment |

(B) ISDS Applications:

- | | |
|---|--------------------------|
| (1) New building construction (<5,000 gal./day) | 1 week from assignment |
| (2) Soil evaluation | 2 weeks from assignment* |
| (3) Subdivision Suitability | 4 weeks from assignment |
| (4) System Suitability | 1 week from assignment |

*While DEM will endeavor to schedule the soil evaluation on a date and time convenient to the applicant, DEM may not be held to the time frame window indicated if the applicant declines or postpones all available dates for the testing suggested by DEM within the window.

Any ISDS application submitted which is deemed to involve work within DEM's Freshwater Wetlands jurisdiction but which lacks a permit or review from DEM's Freshwater Wetlands Program at the time of submission, will be deemed ineligible for the expedited review process.

- 7.05 DEM's assignment of an application for accelerated processing shall not be construed to be a determination on the merits of the application (i.e. the likelihood of the application's approval).

- 7.06 It is the obligation of the applicant to insure that his/her application is complete (e.g. all forms, signatures, fees, plans ... etc.) and is eligible for accelerated processing pursuant to the terms of these regulations. Once a matter is assigned for accelerated processing, DEM shall have no obligation to return an accelerated processing fee if the application must be returned to the applicant for any reason.
- 7.07 Applicants seeking accelerated processing understand and acknowledge that their application may be denied or returned for modifications or the correction of deficiencies and that a new fee will be assessed for any additional review.
- 7.08 The accelerated processing of an application shall be deemed complete as of the return date regardless of whether the application was approved, denied, modified or returned to the applicant for additional information or the correction of deficiencies or due to an incomplete or ineligible application.
- 7.09 Applications that receive accelerated processing and are returned, unapproved, to the applicant (e.g. for revisions, deficiencies, incompleteness or additional information), may be resubmitted for further consideration of accelerated processing for an additional fee in accordance with §8.00, below.
- 7.10 Applications that receive accelerated processing and are denied shall be ineligible for further accelerated processing.

RULE 8 – FEES

- 8.01 A fee for accelerated processing shall be assessed based on the estimated processing time for each application and the estimated personnel costs for the overtime associated with the accelerated review. The estimated processing times and fees for each eligible application are attached hereto as Appendices A and B.
- 8.02 The fee assessed for accelerated processing shall be separate from and in addition to all other fees normally associated with the standard review of the applicable application.
- 8.03 At the time of application, the applicant shall submit two checks:
 - (A) The first check shall be made out in the amount of the standard review fee(s) for the application in question (see the Wetlands and/or ISDS Regulations for current fees).
 - (B) The second check shall be made out in the amount of the appropriate accelerated processing fee for the application in question (see Appendices A and B). This check will be returned to the applicant if DEM determines that it is unable to expedite its review and must proceed with standard review of the application.
- 8.04 Each request for accelerated review of an application shall be subject to a separate fee for any additional accelerated review that requires overtime review.
- 8.05 A resubmission fee of one hundred dollars (\$100.00) shall be assessed for applications that are resubmitted for additional accelerated processing after being revised, corrected or supplemented by the applicant. The Director may decline to review, on an expedited

basis, any resubmission of an application initially accepted for expedited review if staff is not available to perform the overtime work or where the application deficiencies are excessive or the result of hasty, incomplete or careless preparation.

8.06 Refund of Accelerated Processing Fee

In the event that DEM fails to process and return the application to the applicant within the appropriate time set forth in §7.04, above, DEM shall refund to the applicant the accelerated processing fee or resubmission fee. DEM shall retain all standard review fees.

RULE 9 - SEVERABILITY

If any provision of these Rules and Regulations, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rules and Regulations shall not be affected thereby.

RULE 10 – EFFECTIVE DATE & SUNSET PROVISION

The foregoing Pilot Regulations for Accelerated Application Processing, after due notice and hearing, are hereby adopted and filed with the Secretary of State, this ____ day of _____, 2005, to become effective twenty (20) days thereafter, in accordance with the provisions of Chapter 42-35 of the General Laws of Rhode Island, 1956, as amended. These Pilot Regulations shall automatically expire twenty-four (24) months after their effective date.

ATTEST A TRUE COPY:

W. Michael Sullivan, Director
Department of Environmental Management

Date

Notice Given on:

Public Hearing held:

Filing Date:

Effective Date:

I hereby certify that the enclosed is a true and accurate copy of the regulations being filed with the Secretary of State on the _____ day of _____, 2005.

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NOTARY PUBLIC

My commission expires:_____

APPENDIX A

FRESHWATER WETLANDS FEE SCHEDULE

APPLICATION TYPE	PROCESSING TIME (Hours)	ACCELERATED PROCESSING FEE	STANDARD REVIEW FEE *	TOTAL FEE * (Accelerated + Standard)
Presence of Wetlands				
< 5 acres	7	\$375.00	\$150.00	\$525.00
=> 5 < 20 acres	10.5	\$562.00	\$200.00	\$762.00
=> 20 < 40 acres	14	\$749.00	\$250.00	\$999.00
=>40 acres	14 + 7 per each additional 20 acres	\$750.00 + \$375 for each additional 20 acres	\$250.00 + \$50 for each additional 20 acres	\$1000.00 + \$425 for each additional 20 acres
Verification of Wetland Edge				
< 5 acres	10.5	\$562.00	\$300.00	\$862.00
=> 5 acres	10.5+ 0.007/linear foot	\$562.00+\$0.37	\$300.00+\$0.20 / linear foot	\$862.00 + \$.57 / linear foot

* **NOTE:** The "Standard Review Fee" and the "Total Fee" columns are provided as computational examples only based on the applicable Freshwater Wetlands application fees in effect at the time these regulations were issued.

APPENDIX B

ISDS FEE SCHEDULE

APPLICATION TYPE	PROCESSING TIME (Hours)	ACCELERATED PROCESSING FEE	STANDARD REVIEW FEE *	TOTAL FEE * (Accelerated + Standard)
System Suitability Determination	1.5	\$54	\$55	\$109
Soil Evaluation				
Single Lot	2	\$107	\$100	\$207
Each Additional Lot	1	\$54	\$50	\$104
New Building Construction <5000 gallon / day (gpd)				
Single Family Home	2	\$107	\$150	\$257
Commercial < 2000 gpd	2	\$107	\$200	\$307
Commercial ≥ 2000 < 5000 gpd	5	\$268	\$500	\$768
Subdivision Suitability				
3 lots	3	\$161	\$300	\$461
4 lots	4	\$214	\$400	\$614
5 lots	5	\$268	\$500	\$768
6 lots	6	\$321	\$600	\$921
7 lots	7	\$375	\$700	\$1,075
8 lots	8	\$428	\$800	\$1,228
9 lots	9	\$482	\$900	\$1,382
10 lots	10	\$535	\$1,000	\$1,535
Each Additional Lot	0.5	\$535 + \$27 per each additional lot	\$1000 + \$50 per each additional lot	\$1535 + \$77 per each additional lot

* **NOTE:** The "Standard Review Fee" and the "Total Fee" columns are provided as computational examples only based on the applicable ISDS application fees in effect at the time these regulations were issued.